

1 THE COURT: All right. Mr. Robertson.

2 MR. ROBERTSON: Thank you, Your Honor. I'm just
3 reserving for the record, as I understand we are arguing
4 tomorrow, Your Honor, ePlus moves for judgment as a matter of
5 law under Federal Rule of Civil Procedure 50, that all of the
6 asserted claims, '683, '516, and '172 patents are valid.

7 As Rule 50 provides, a judgment as a matter of law
8 may be granted when a reasonable jury would not have a legally
9 sufficient evidentiary basis to find for the nonmoving party on
10 that issue. Thank you.

11 THE COURT: You are just moving against validity.

12 MR. ROBERTSON: On that issue. As we had previously
13 put into the record, that judgment of law should be granted on
14 infringement, and we had also preserved that for the time
15 period that Your Honor specified you wanted to have oral
16 argument which I understand to be tomorrow, and I did confer --

17 THE COURT: You're not moving now after he's finished
18 on that?

19 MR. ROBERTSON: I would like to renew that, yes, Your
20 Honor.

21 THE COURT: I just want procedurally to know what I'm
22 doing. That's all.

23 MR. ROBERTSON: I understand.

24 THE COURT: All right.

25 MS. HUGHEY: Thank you, Your Honor. For the record,

1 Lawson opposes ePlus's judgment as a matter of law on
2 invalidity. This Court should deny ePlus's motion for judgment
3 as a matter of law because a reasonable jury has more than a
4 legally sufficient evidentiary basis to find for Lawson on the
5 issue of invalidity of the asserted claims.

6 At trial, documents demonstrated, witnesses testified
7 regarding the features and functionality of the prior art. Dr.
8 Shamos went through every single claim --

9 THE COURT: I'm going to hear the arguments tomorrow.

10 MS. HUGHEY: Okay. For these reasons, Lawson opposes
11 ePlus's judgment as a matter of law, and to the extent that
12 ePlus has renewed a judgment as a matter of law on the issue of
13 infringement, we also oppose that, and, once again, renew our
14 own motion.

15 THE COURT: Your motion on infringement?

16 MS. HUGHEY: Yes.

17 THE COURT: All right. Are we ready then --

18 MR. ROBERTSON: One other issue, I don't know if the
19 Court wants to now inform the jury we're moving to a new phase
20 of the trial for rebuttal.

21 THE COURT: Yes. And you are rebutting on both
22 infringement and invalidity. Are you going to -- are you going
23 to offer any evidence -- I mean, you have the right of rebuttal
24 on infringement and invalidity. Are you rebutting both or one?

25 MR. ROBERTSON: Just one, Your Honor, the invalidity.

1 THE COURT: Are we ready for the jury?

2

3 (Jury in.)

4

5 THE COURT: Has anybody filed briefs on these JMOLs?
6 Somebody mentioned it, and I just haven't checked. Mr. Neal,
7 do you have a pad?

8 Now, ladies and gentlemen, you've been hearing
9 testimony in the case of -- Lawson's side on the issue of
10 infringement and also on the affirmative defenses of
11 invalidity, and now it's time for ePlus to respond to the
12 invalidity points that were made by Lawson in its case, and
13 that's what this next part of the trial will be.

14 Just so you understand, that is also the last part of
15 the trial except for the closing arguments and your
16 deliberative process.

17 Just for your information, for those of you who have
18 been on juries before, I know that you know that sometimes the
19 jury decides the question of what's to be done if they return a
20 verdict of one kind or another, either infringement or not,
21 whatever, what happens then.

22 In this case, what happens after you return your
23 verdict does not involve you. It is a matter that the Court
24 will be taking care of, so your last responsibility will be to
25 hear this evidence today and then to hear the closing arguments

1 and the instructions and deliberate and decide on the basic
2 issues of patent infringement and patent validity. Once you
3 return the verdict on those, then the rest of what happens, if
4 anything, is for the Court to decide. Is that satisfactory;
5 counsel?

6 MR. ROBERTSON: Yes. Thank you, Your Honor.

7 THE COURT: All right, Mr. Strapp, are you taking
8 over now?

9 MR. STRAPP: Yes. Your Honor, ePlus calls as its
10 next witness Mr. Ken Farber.

11

12 **KENNETH FARBER,**

13 a witness, called by the plaintiff, having been first duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. STRAPP:

17 Q Could you please state your name again for the record.

18 A Kenneth Farber.

19 Q And just to refresh everyone's memories, can you please
20 describe your present employment.

21 A Sure. I'm the president of ePlus Systems and content
22 services.

23 Q How long have you been in that position?

24 A Ten years.

25 Q Mr. Farber, last time you were on the stand, you offered

1 some testimony about the ePlus/Ariba license agreement; do you
2 recall that?

3 A Yes.

4 Q Has ePlus ever licensed the three patents that are at
5 issue in this case to any other companies?

6 A Yes.

7 Q What other companies has ePlus licensed the patents to?

8 A We've licensed the patents to companies such as SAP,
9 SciQuest, Verian, Perfect Commerce.

10 Q And approximately how much revenue has ePlus received for
11 licensing the three patents that are in suit in this case?

12 A Close to 58 million.

13 Q Do you see in front of you, Mr. Farber, is that a complete
14 list of the licensees for ePlus's patents-in-suit?

15 A Yes, it is.

16 Q Has ePlus ever licensed the patents-in-suit to anyone else
17 besides these five companies?

18 A There was a patent license granted to a company called
19 ProcureNet which is the company -- or piece of the company that
20 ePlus had acquired.

21 Q And that was back in what time frame?

22 A It was around the acquisition, about ten years or so ago.

23 Q Would you consider each of the five companies listed here,
24 Ariba, SAP, Perfect Commerce, Verian, and SciQuest to be
25 competitors of ePlus?

1 A Yes. They are direct competitors.

2 Q And competitors in the e-procurement software industry?

3 A That's correct.

4 Q What about ProcureNet, are they a competitor of ePlus?

5 A No, ProcureNet is not a competitor.

6 Q Listed here you have the five license agreements for the
7 companies ePlus considers as competitors to the e-procurement
8 software industry?

9 A That's correct.

10 Q Are you personally familiar with license agreements, the
11 five license agreements that you've described?

12 A I am.

13 Q How do you have any familiarity with these agreements?

14 A I was directly responsible and involved in the negotiation
15 and the finalization of these agreements.

16 Q For each five of the agreements?

17 A Correct.

18 Q Mr. Farber, you have a notebook in front of you. Could
19 you please turn to Plaintiff's Exhibit 43.

20 A Okay.

21 Q Do you recognize the document in front of you?

22 A Yes.

23 Q What is this document here?

24 A This is the license and settlement agreement between Ariba
25 and ePlus.

1 MR. STRAPP: Can you blow up the first paragraph
2 there, please.

3 Q When was this particular agreement entered into between
4 ePlus and Ariba?

5 A February 12th, 2005.

6 Q Mr. Farber, can you turn, please, to section F of the
7 agreement. That's on page four of the license, bottom of the
8 page, paragraph 11. It's got the Bates number on the bottom
9 right 600.

10 A 600?

11 Q It's up on your screen as well.

12 THE COURT: May I see counsel for just a minute.

13

14 (Discussion at sidebar as follows:)

15

16 THE COURT: I'm a little bit confused about using
17 these exhibits. Mr. McDonald, do you want the exhibits in?

18 MR. McDONALD: We had opposed their admission at one
19 point, Your Honor, but you said they could come in. We would
20 stipulate to what he's already testified about the cumulative
21 numbers. I think he could probably get through it without
22 having to go through these things.

23 THE COURT: Why do we need to have the documents in
24 if they'll agree to the amounts?

25 MR. STRAPP: I wanted to show that each one of the

1 licenses were for the same three patents that are in suit in
2 this case and that each of these companies are the competitors.
3 I mean, maybe I can do that without showing the documents.

4 MR. McDONALD: I've seen them all. They all are the
5 three patents-in-suit.

6 THE COURT: I'm sure if he knows that, he'll testify
7 to it. Then we don't have to get into any discussion of that.

8 MR. McDONALD: That would certainly be what we'd
9 appreciate, Your Honor.

10 MR. STRAPP: All right, so we'll do it without
11 showing them the documents.

12 THE COURT: Then we don't have to get into -- the
13 reason I ask this is because if you want to show that they were
14 the product of settlements, I need to give the jury some
15 instructions about it.

16 In other words, if you want to discount their
17 effectiveness by examining on -- that they came out of
18 litigation, there are different lawyers that approach that
19 issue differently about whether they want to get into that or
20 not. Certainly you can get into it, and you can have the
21 exhibits in in that event, but if you're not going to approach
22 it that way --

23 MR. McDONALD: Well, I think he's already identified
24 them as settlement and license agreements. That's what they're
25 all called, and if he just has him establish that they are in

1 settlements of litigation, I don't know that --

2 THE COURT: That's sufficient for you?

3 MR. McDONALD: Yeah.

4 THE COURT: Then let's do it that way, and don't use
5 the documents.

6

7 (End of sidebar discussion.)

8

9 Q Mr. Farber, we were talking about the ePlus/Ariba license
10 agreement. Can you tell me specifically what was exchanged or
11 what was licensed as part of that agreement between ePlus and
12 Ariba? Let's start first with Ariba. What did Ariba license,
13 if anything, to ePlus as part of that agreement?

14 A What Ariba licensed to ePlus is the ability for ePlus to
15 utilize its patents.

16 Q So Ariba licensed its own patents to ePlus as part of this
17 license agreement?

18 A That's correct.

19 THE COURT: When you say its patents, you mean the
20 right to use Ariba's patents?

21 THE WITNESS: That's correct.

22 THE COURT: All right, go ahead.

23 Q What did ePlus license to Ariba?

24 A Conversely, we had provided the rights for Ariba to
25 utilize our patents.

1 THE COURT: The patents-in-suit?

2 THE WITNESS: Correct, the patents-in-suit.

3 Q That is the '683, the '172, and '516 patents?

4 A Correct, the same ones we're talking about.

5 Q Did Ariba agree to pay any amount of money for this
6 license agreement?

7 A Yes.

8 Q How much was that?

9 A I believe it was -- let me go to that, refresh my memory
10 exactly, but it was 37 million.

11 Q \$37 million?

12 A Correct.

13 Q So in sum then, Ariba granted a license to ePlus for its
14 patents, paid ePlus \$37 million, and in exchange, ePlus
15 licensed the three patents that are in suit in this case; is
16 that correct?

17 A That's correct.

18 Q Now, you had mentioned there were four other license
19 agreements that ePlus has entered into with its competitors.
20 What was the next one in time after Ariba? What was the next
21 license that ePlus granted?

22 A The next one would be SAP.

23 Q And do you recall approximately what time frame that was?

24 A Let me try to find an agreement.

25 Q In your binder, it's at Plaintiff's Exhibit 318.

1 A Okay. It was -- looks like it was finalized
2 December 11th, 2006.

3 Q Who is SAP?

4 A SAP is a large company that some of the products that they
5 offer competed with our solutions.

6 Q And I didn't get a chance to ask you, but who is Ariba?

7 A Same. Ariba was a large company that competed with ePlus
8 in the market.

9 Q Can you describe for me what was licensed as part of the
10 ePlus/SAP license agreement?

11 A We had provided, in a similar fashion as we had done for
12 Ariba, we provided them the ability to utilize the three
13 patents that are in suit here. We granted them a license to
14 utilize those patents.

15 Q And what did SAP give to ePlus in exchange for a right to
16 use the three patents that are in suit in this case?

17 A I have to just refresh my memory if they had
18 cross-granted --

19 Q Let me direct your attention to section four of the
20 agreement.

21 A Okay.

22 Q 4.1?

23 A Yeah, what this is is that in exchange for the grant by
24 ePlus to the three patents-in-suit, SAP paid ePlus 17 and a
25 half million dollars.

1 Q \$17.5 million?

2 A That's correct.

3 Q We've talked about the Ariba and SAP license agreements.
4 I think you mentioned that there were three additional
5 agreements. Can you just refresh my memory what those three
6 agreements are?

7 A Sure. There was Verian, it was Perfect Commerce, and
8 SciQuest.

9 Q Let's start with Perfect Commerce. If you could turn to
10 Plaintiff's Exhibit 317 in your binder.

11 A Okay.

12 Q When did ePlus enter into a license agreement with Perfect
13 Commerce?

14 A That would be August 28, 2009.

15 Q Who is Perfect Commerce?

16 A Perfect Commerce is a company that competes with ePlus.

17 Q And, again, can you describe for us what the subject
18 matter was that was licensed as part of this ePlus/Perfect
19 Commerce license agreement?

20 A Specifically associated with the three patents that are in
21 suit here.

22 Q ePlus licensed the three patents-in-suit to Perfect
23 Commerce?

24 A That's correct.

25 Q So that Perfect Commerce could use, sell, make, or offer

1 products that incorporated the technology in those three
2 patents?

3 A Yes, that's correct.

4 Q And how much money, if any, did Perfect Commerce pay for
5 the right to have a license to the ePlus patents?

6 A Let me just make sure.

7 Q Let me direct your attention to Exhibit A to the Perfect
8 Commerce --

9 A I have it.

10 Q -- agreement.

11 A In exchange for the patents, they paid \$750,000.

12 Q Well, as the negotiator for ePlus, why was ePlus willing
13 to accept \$750,000 from Perfect Commerce if ePlus -- if SAP and
14 Ariba had agreed to pay millions of dollars more?

15 MR. McDONALD: I object to this, Your Honor. We
16 tried getting into the details, but there was claims of
17 privilege, so we weren't able to inquire into all the whys and
18 wherefores of these settlements. I don't think it's
19 appropriate to go into them now, and also cumulative.

20 THE COURT: It isn't cumulative, I don't think, but
21 if in fact you claimed a privilege and foreclosed their inquiry
22 in depositions, then you can't inquire into it because that's
23 not been allowed.

24 MR. STRAPP: Your Honor, I was not present when
25 privilege was claimed --

1 THE COURT: You read the deposition, I take it, in
2 preparation.

3 MR. STRAPP: I did read that deposition, and I
4 believe that we didn't make a claim of privilege with
5 respect to --

6 THE COURT: You did?

7 MR. STRAPP: We did not with respect to this
8 particular agreement.

9 THE COURT: Mr. McDonald.

10 MR. McDONALD: I'm looking for it.

11 THE COURT: If they did, if you did, your objection
12 is well-taken. If they did not, your objection is not
13 well-taken.

14 MR. McDONALD: What we're able to find at this point,
15 Your Honor, is at pages 416 to 417 of Mr. Farber's testimony
16 regarding the SAP agreement, he was asked, how did you come up
17 with a settlement number in the case, and his answer was, I
18 used my counsel to determine what they thought was fair, et
19 cetera, and then we got into some privilege issues there.

20 THE COURT: This relates to the Perfect Commerce
21 agreement. They did the same thing. No?

22 MR. McDONALD: Nothing specific to Perfect Commerce,
23 Your Honor.

24 THE COURT: All right. Objection overruled.

25 Q Mr. Farber, let me ask you that question again. Why was

1 it that ePlus agreed to license the patents to Perfect Commerce
2 for \$750,000 if Ariba had paid 37 million and SAP had paid 17
3 and a half million for the patents?

4 A Well, I mean, quite simply --

5 MR. McDONALD: I object, Your Honor, because I think
6 he worked SAP into that question, and that is the one we were
7 able to find --

8 MR. STRAPP: Your Honor, I'm asking about Perfect
9 Commerce and why ePlus, the --

10 THE COURT: Why don't you reframe your question.

11 MR. STRAPP: Sure.

12 Q Mr. Farber, why was it that ePlus accepted \$750,000 for a
13 license, to grant a license to Perfect Commerce if Ariba was
14 willing to pay \$37 million for a license?

15 A Well, they were a much, much smaller company for starters.
16 Secondly, we had the opportunity during the negotiation to
17 actually physically go to their location and audit their
18 financials, and, you know, we had some significant concerns of
19 them being a going concern, that they would actually stay in
20 business over time, and we came to an amicable agreement, you
21 know, and considered this to be a fair settlement agreement
22 based upon what their situation was at the time as a business.

23 Q And Perfect Commerce, again, that was a company that
24 competed in the e-procurement software industry?

25 A That's correct.

1 Q I think you mentioned that ePlus also granted a license to
2 SciQuest; is that right?

3 A That is correct.

4 Q Can you turn to Plaintiff's Exhibit 319 in your notebook,
5 please.

6 A Okay.

7 Q When did ePlus enter into a license agreement with
8 SciQuest?

9 A That's August 19th of 2009.

10 Q And what was the subject matter that was granted by ePlus
11 to SciQuest as part of this license agreement?

12 A This, again, is the licensing of the three
13 patents-in-suit.

14 Q The three patents in this suit?

15 A Yes, the '683, the '516, and '172 patent.

16 Q And what, if anything, did SciQuest give to ePlus in
17 exchange for a license to the three patents, same patents that
18 are in suit in this case?

19 A Let me check here. In exchange for the licenses that were
20 granted by ePlus, SciQuest paid us \$2.4 million.

21 Q And the last, I think the last license you mentioned was
22 with a company called Verian; is that right?

23 A Yes, that's correct.

24 Q Who is Verian?

25 A Verian was also and also is a competitor of ePlus in the

1 market.

2 Q And let's just take a look quickly at that license
3 agreement. That's at Plaintiff's Exhibit 320?

4 A Yes.

5 Q When did ePlus enter into a license agreement with Verian?

6 A July 7th, 2009.

7 Q What did ePlus grant to Verian as part of this license
8 agreement?

9 A The same as the other licenses. We granted the three
10 patents that have been in suit here.

11 Q And can you tell me what, if anything, Verian agreed to
12 pay ePlus for a right to use the patented technology?

13 A Sure. They had an initial payment of \$500,000.

14 Q Was there any other arrangement between the two companies
15 for their licenses?

16 A Yeah. We had settled on -- they were also a small
17 company, similarly to Perfect, but we saw them more as an
18 ongoing concern, and we agreed to associate a royalty so that
19 when they exceeded \$15 million within a calendar year, that we
20 would receive two and a half percent of those revenues.

21 Q What was the reason that you felt like that was a fair and
22 reasonable license arrangement with Verian, this royalty
23 provision?

24 A Why did we think it was fair?

25 Q Yeah.

Farber - Direct

2633

1 A Well, I think it was fair to both parties. I mean, we
2 weren't necessarily looking to, you know, press a thumb on them
3 and put them out of business. You know, we did see them as
4 staying in business.

5 They didn't have the funds to pay what we thought, you
6 know, the patents were worth at that time, but, you know, we
7 gave them an opportunity. As they grew, then, you know, there
8 was a percentage associated as a royalty to the patents.

9 Q Mr. Farber, has there been any recognition in the supply
10 chain industry for the products that ePlus sells that
11 incorporated the patented technology?

12 A Yes. Yes.

13 Q What kind of recognition?

14 A There's been industry awards, industry reports.

15 Q And have you or your customers been recognized for any
16 specific benefits or specific recognition for the Procure+ or
17 Content+ products?

18 A Yeah. Well, one of our clients recently was just awarded
19 what's called Pros to Know which is a supply chain. We
20 actually nominated one of our clients --

21 THE COURT: What's it called, sir?

22 THE WITNESS: Supply chain.

23 THE COURT: No.

24 THE WITNESS: Oh, pros, as in professionals, to know.

25 THE COURT: Right, t-o, and then k-n-o-w.

1 THE WITNESS: That's correct.

2 THE COURT: And that is an award?

3 THE WITNESS: It's a recognition award, and it's this
4 publication, an organization that evaluates submissions and
5 looks at how individuals or companies are using solutions.

6 THE COURT: Excuse me.

7 MR. McDONALD: Thank you, Your Honor. I think the
8 sequence that we had talked about was that they first need to
9 lay a foundation and show a connection to the patented
10 inventions before they go into any detail about any of these
11 awards that might be for a corporation as a whole, things like
12 that, so I object to the question unless there's some
13 connection specifically to the claimed invention.

14 Q Mr. Farber, do you recall when you were here earlier in
15 this case you talked about Procure+ and Content+?

16 A I do.

17 Q Are those products that are developed and sold by ePlus?

18 A Yes.

19 Q Are those products that ePlus believes incorporates the
20 patented technology?

21 A Yes.

22 MR. McDONALD: Objection, Your Honor, lack of
23 foundation. This witness isn't qualified to testify as to the
24 scope of the claims or whether the products are covered by
25 that. In fact, we tried to inquire into that in deposition and

1 weren't able to.

2 THE COURT: You shut it down in deposition?

3 MR. STRAPP: I never shut them down in depositions on
4 that particular issue that I can recall.

5 MR. McDONALD: He indicated he wasn't able to do the
6 analysis, that the lawyers had to do it, and he couldn't.
7 That's what I mean by that.

8 MR. STRAPP: Let me maybe --

9 THE COURT: He's not asserting -- what he's doing
10 is -- what he contends, he understands the claims -- I mean the
11 patents to be practiced in his own products; is that right?

12 MR. STRAPP: That's correct.

13 THE COURT: He's qualified to testify to that.

14 MR. McDONALD: I think we need to lay a foundation,
15 because he did say in the deposition he had to turn that over
16 to the lawyers, Your Honor, he couldn't do it himself.

17 MR. STRAPP: He's talking about --

18 THE COURT: Did he or not? Did he do that?

19 MR. ROBERTSON: Your Honor, I was at the deposition,
20 and I don't recall that at all.

21 THE COURT: Go over there and look at the deposition
22 transcript. If you did that, maybe it's quitting time,
23 Lucille.

24 MR. STRAPP: I'll move on to a different area.

25 MR. ROBERTSON: Wait a minute.

1 MR. McDONALD: Page 396, Your Honor, he said, I don't
2 try to interpret everything back to our patented claims because
3 I'm not a lawyer, and I don't, you know, know all the legal
4 aspects of it.

5 MR. ROBERTSON: Could we have the question --

6 MR. STRAPP: Your Honor, let me read the question
7 there. That question was, what information did you learn about
8 the functionality of Lawson's product line from going to their
9 website.

10 It has absolutely nothing to do with the ePlus
11 products. So I think -- if there's no deposition testimony
12 that Mr. McDonald is referring to, we should be permitted to go
13 forward.

14 MR. McDONALD: He was saying there, I'm not a lawyer
15 and I don't understand the legal aspects of interpretation.
16 He's saying he's not qualified to do this construction
17 approach. We didn't ask the question over and over again once
18 he made the record of that.

19 THE COURT: That was a different question.
20 Overruled. It's not even related to this one except very
21 marginally. This witness can testify that as far as he's
22 concerned, the patents -- the products that he sells, that he's
23 talking about, ePlus something, do or do not use the patents.

24 MR. McDONALD: I also object. He hasn't laid any
25 foundation that he's used the Court's claim constructions or

1 anything for purposes of that. His personal understanding
2 would not establish the nexus necessary.

3 THE COURT: He's the guy that runs the company.

4 Q Mr. Farber, could you please state again, which of the two
5 products you are referring to that, in your understanding,
6 practice the patented technology of the patents-in-suit?

7 A It's Procure+ and Content+.

8 Q And those were the products that we saw during your
9 testimony earlier that are marked with the patent numbers on
10 the front of the brochures?

11 THE COURT: Did he sell that.

12 Q Okay. Does ePlus sell Procure+ and Content+?

13 A Yes, we do.

14 Q And has ePlus received any industry recognition or awards
15 for Procure+ and Content+?

16 A Yes, we have.

17 Q Can you describe what some of those industry recognitions
18 and industry awards are.

19 A So the one that I was just previously describing from
20 supply chain was a Pros to Know, submission that we put in for
21 one of our clients which was Unikko. They are a janitorial
22 facility management company, and we put them in for their use
23 of our solutions and how they use our solutions within their
24 environment and the benefits that they've derived from that.

25 Q And have you been recognized for your -- have Procure+ and

1 Content+ been recognized by any publications in the supply
2 chain industry?

3 A Yes.

4 Q Can you give me some examples?

5 A They were recognized by, I believe, iSource magazine and
6 also I think we received some prior awards by supply chain,
7 and, you know, we had awards that even go back to the
8 ProcureNet days. The United States government gave us an award
9 that's called the Hammer Award --

10 MR. McDONALD: Your Honor, he's talking about
11 ProcureNet now. There's no foundation.

12 THE COURT: That is a different issue.

13 MR. STRAPP: Thank you, Your Honor. I have no
14 further questions.

15 THE COURT: I told you, ladies and gentlemen, you're
16 not going to be concerned with money at the end of the case.
17 This is being offered because it has -- this evidence that he's
18 just testified to is being offered because it's pertinent to
19 one of the issues that are called secondary considerations that
20 I'll tell you about later, but as a general proposition, in
21 response to a claim that a patent is obvious in view of the
22 prior art, the patentee can introduce evidence showing, among
23 others things, that there has been commercial success of the
24 patent, and that's something that you can take into account in
25 deciding invalidity, and that's why this evidence is coming in

1 on this topic.

2

3

CROSS-EXAMINATION

4

BY MR. McDONALD:

5

Q Good morning Mr. Farber. Good afternoon.

6

A It's close.

7

Q You mentioned ProcureNet. They were the company that was the spinoff from Fisher that took these patents as part of that spinoff; is that right?

9

10

MR. STRAPP: Objection. Lack of foundation, beyond the scope of the direct.

11

12

THE COURT: I think he testified to it earlier.

13

MR. STRAPP: He didn't mention Fisher, I don't think, at all.

14

15

THE COURT: Not with you, but in the earlier part of his testimony.

16

17

A Well, what I testified to was that ePlus acquired the assets of ProcureNet.

18

19

Q Those assets included the three patents in this case; correct?

20

21

A That's correct.

22

Q And you've testified today about the money that was made in connection with these patents; right?

23

24

A From the licensing perspective, yes.

25

Q And ProcureNet, did they, as I understood it, use the

1 patented technology?

2 A Yes.

3 Q ProcureNet didn't make, did not make money on these
4 patents, did they?

5 A I don't know. I wasn't involved in the financials of the
6 company at that time. I do know that they did license a number
7 of different companies and used it internally.

8 Q You were an executive of ProcureNet, weren't you?

9 A For just under a year, yes.

10 Q You were senior vice president of business development?

11 A That's correct.

12 Q Isn't it true that in the years leading up to the sale of
13 the patents from ProcureNet to ePlus, that ProcureNet lost tens
14 of millions of dollars?

15 A I don't believe it was tens of millions. I don't know for
16 sure.

17 MR. McDONALD: May I approach, Your Honor, with
18 Plaintiff's Exhibit 16? It was a Plaintiff's Exhibit. They
19 withdrew it, but it's Plaintiff's Exhibit 16.

20 THE COURT: If they withdrew it --

21 MR. STRAPP: Your Honor, I object to this.

22 MR. McDONALD: I'm using it for impeachment.

23 MR. STRAPP: He hasn't established he's impeaching
24 any particular testimony.

25 MR. McDONALD: Or refresh his recollection.

1 THE COURT: He said he didn't know. I guess I have
2 this question: You objected to anything about ProcureNet, Mr.
3 McDonald. Now you are asking about it. Why, when I sustained
4 your objection, are we going into the topic of what went on at
5 ProcureNet?

6 MR. McDONALD: Well, I asked -- had an objection on a
7 specific question on the foundational issue. We've laid the
8 foundation. I just wanted to make sure we went through the
9 right process. I wasn't saying he couldn't talk about it at
10 all, just like I have for the other one, to lay the foundation
11 first, but...

12 THE COURT: That objection really wasn't foundation.
13 It was that you couldn't get into ProcureNet at all.

14 MR. McDONALD: That was my intent with raising the
15 objection, Your Honor, was a foundational objection.

16 THE COURT: It may have been your intent. It wasn't
17 articulated as that, but he's -- I don't understand you letting
18 it go on so long.

19 MR. STRAPP: Your Honor, I object to any line of
20 questioning --

21 THE COURT: Why? After I said something about it,
22 you decide to object?

23 MR. STRAPP: No. Specifically with respect to this
24 exhibit and also to the line of questioning generally, but on
25 the exhibit specifically, Your Honor, he's putting it in for

1 impeachment purposes, he said, but he's not impeaching the
2 witness on any particular testimony.

3 MR. McDONALD: I was going to use it, actually, to
4 refresh his recollection. I corrected that because he said --

5 THE COURT: Why is what ProcureNet made relevant to
6 this case?

7 MR. McDONALD: Well, as I understand, the relevance
8 of the licensing revenues that had to do with the financial
9 success of the patents. I'm trying to establish that there was
10 another side to the financial aspects of these patents where
11 they lost a lot of money.

12 THE COURT: How do we know that the loss came from
13 the patents as opposed to something else?

14 MR. McDONALD: That's what ProcureNet was selling,
15 was the products --

16 THE COURT: That's not in the record.

17 MR. McDONALD: I thought Mr. Farber had said that,
18 but we can clarify that. That's what the assets of ProcureNet
19 were and what they were selling were these products from
20 Fisher --

21 THE COURT: What he said was that they acquired the
22 patents from ProcureNet. He didn't say that was the only asset
23 they had.

24 MR. STRAPP: Your Honor, in fact, he testified
25 earlier that --

1 THE COURT: Get down to the basic point. What does
2 what ProcureNet did with it have anything to do with this case?
3 How does it show commercial success? That's the issue. How is
4 it relevant to show commercial success or lack thereof?

5 MR. McDONALD: It's relevant because they lost tens
6 of millions of dollars selling the products that are
7 purportedly covered by the patents.

8 MR. STRAPP: Your Honor, that's just Mr. McDonald
9 testifying. There's been no evidence at all --

10 THE COURT: The jury knows and has been told that
11 doesn't make any difference. I think he can ask -- look at the
12 document and see if any -- point him -- don't -- just point him
13 to it without talking about it.

14 Q Could you go to the page, Mr. Farber -- actually it's two
15 pages -- in the lower left corner, the number ePlus 0228410 to
16 8411.

17 MR. STRAPP: Mr. McDonald, is there a date on this
18 document?

19 A You mean on the lower right you are saying?

20 Q Yes, that's where the numbers are. This was the form S-1
21 filing. I don't know that that I see the date on the front. I
22 think it's either 2000 or 2001.

23 THE WITNESS: Okay.

24 Q Does seeing that --

25 THE COURT: Were you there then?

1 THE WITNESS: I'm sorry?

2 THE COURT: Were you with that company then?

3 THE WITNESS: Not for all the years represented but
4 just for the one year.

5 Q At the time of this, in the years 2001, at the time of the
6 effort by ProcureNet to go public when they filed this S-1
7 form, you were working with them at that time; right?

8 MR. STRAPP: Your Honor, the purpose that Mr.
9 McDonald is asking the question is talking about historical
10 financials of the company for time period when Mr. Farber
11 wasn't even there.

12 THE COURT: Wait until you get a question that deals
13 with that, and then get vertical with your objection. You
14 can't object to everything that you think he might come out
15 with. You have to give some time to Mr. Farber so he can --
16 you have to hear the question, then object, frame a reason, and
17 object to it at that time. Then I have something to rule on.

18 Otherwise, I'm striking a whole area of inquiry on
19 the speculative approach that maybe he might not be, Mr.
20 McDonald may not be taking. Let's go. You looked at those
21 pages. Does looking at those pages refresh your recollection
22 about what, Mr. McDonald?

23 MR. McDONALD: About the finances and the losses of
24 ProcureNet at the time it sought to become a public company.

25 THE WITNESS: I have vague recollection. I can't

1 contest to how the numbers were created and the statements --

2 THE COURT: That isn't the question. The question
3 is, does it refresh your own personal recollection of what the
4 situation was.

5 THE WITNESS: No, not particularly.

6 THE COURT: All right, it doesn't.

7 Q At the time ProcureNet was seeking to go public,
8 Mr. Farber, you were an executive of the company; is that
9 correct?

10 A I was senior vice president of business development, yes.

11 Q You were involved in the process of creating the
12 application to the Securities and Exchange Commission to go
13 public; right?

14 A I wasn't really involved in it, no.

15 Q You were identified in the papers filed with the secretary
16 as one of the executives of the company; correct?

17 A I was named as one of the executives, yes.

18 THE COURT: Move on to something else. He doesn't
19 know anything about that.

20 Q You were involved in the process -- when ProcureNet sold
21 assets to ePlus, you then began working for ePlus at that
22 point; right?

23 A That's correct. Yes.

24 Q After ePlus acquired the patents, you were involved in a
25 valuation of those patents; correct?

1 A Can you repeat that? I'm sorry.

2 Q After ePlus acquired the patents and you were with ePlus,
3 you were involved in a valuation the three patents involved in
4 this suit; correct?

5 A I don't believe I was, no.

6 Q You were designated in this case as a witness to testify
7 about the valuations of the patents involving the ePlus
8 company; is that fair?

9 A One of the elements that I was deposed for, sure.

10 Q So the company picked you as the witness to testify about
11 valuations of the patents that ePlus was aware of; correct?

12 A Yes, of what occurred, sure.

13 Q As part of that testimony, you gave testimony about a
14 valuation of the patents that ePlus did after it acquired them
15 from ProcureNet; right?

16 A I vaguely recall that, sure.

17 Q And in that, at that time when ePlus acquired those three
18 patents, it did a fair market value of those patents, didn't
19 it?

20 A That's what the agreement says, sure.

21 Q When you say that's what the agreement says, what are you
22 talking about?

23 A Well, if you'd like to go further in my deposition, I
24 think I explained, you know, what I thought had occurred at
25 that time.

1 Q Well, I'm just asking, you did a valuation. That's not an
2 agreement. You're talking about -- you did a valuation after
3 you acquired the patents --

4 THE COURT: He didn't do the valuation. He was
5 designated in the course of discovery to testify about
6 valuation by ePlus, apparently. Part of what a witness who is
7 so designated has an obligation to do is, whether he has
8 personal knowledge about it or not, is go back and look at
9 company records and see what he can put together on a requested
10 subject.

11 One of the requested subjects was, what valuation was
12 put on the patents when they were acquired by ePlus from
13 ProcureNet, and that's what you are asking about, and that's
14 what he's talking about, not what he personally knew at that
15 time or knows now. It's something he did to check some things
16 out. Get to the bottom line.

17 Q Isn't it true, Mr. Farber, that at that time, it was
18 estimated by ePlus management that the fair market value of all
19 of the patents involved in this suit was \$12,000?

20 A Yes, that's how they recorded it in the agreement.

21 MR. McDONALD: I have no further -- let me turn to
22 another issue.

23 Q SciQuest is one the licensees; correct?

24 A Yes.

25 Q And SciQuest, is that the company that was actually

1 working together with Lawson, as you understood it, with
2 respect to Cleveland Clinic Foundation?

3 A Well, I think we heard here it was Cleveland Clinic, yes.

4 Q You are aware, though, that from time to time, Lawson had
5 a situation where if they couldn't provide certain services to
6 their customers, that their products weren't capable, they
7 would team up with SciQuest to do so?

8 A For health care. There were specific instances they
9 worked with SciQuest to try to win a business.

10 Q That was a situation where Lawson's system was already in
11 place at that customer with the requisitioning and purchasing
12 systems; correct?

13 MR. STRAPP: Objection.

14 THE COURT: You shifted and got an indefinite pronoun
15 that was single-person specific to an answer that, in fact, was
16 generic. So ask the question again. What you mean is, what
17 was going on in Cleveland Clinic at the time.

18 Q Well, is Cleveland Clinic the one that you are aware of
19 specifically, or --

20 MR. STRAPP: Objection, Your Honor. This is beyond
21 the scope of my direct exam.

22 THE COURT: Well, you did raise SciQuest, and I think
23 he's trying to -- I assume you're trying to get into why
24 SciQuest got the purchase price that it got of \$2.4 million.
25 Is that what you are asking?

1 MR. McDONALD: Yeah, to show their products are
2 actually different from the Lawson products.

3 THE COURT: That's a different issue. That's not
4 part of what -- his objection on that is sustained if -- I
5 thought you were trying to get to why they cut them a deal.
6 That's a purpose of legitimate inquiry, but whether they had
7 the same or similar products is not subject to something he
8 testified to, so move on.

9 Q Your understanding is SciQuest specifically markets making
10 a variety of catalogs available to customers; is that right?

11 A No. My understanding of SciQuest is they provide
12 procurement, and they provide search mechanisms, and they also
13 have a business that revolves around supplying a health care
14 catalog to anybody in addition to the procurement content
15 solutions.

16 Q So you understand, SciQuest specifically does have a
17 product including making available to customers multiple
18 catalogs?

19 A I don't know -- I've never looked at their catalog --

20 THE COURT: Before or after the license, or when are
21 we talking about?

22 MR. McDONALD: Either time, either before or after.
23 Just what's their product.

24 A I don't know what's physically in their catalog, because
25 my dealing with them and in their -- the patents that are in

1 suit have nothing to do with the catalog that they provided to
2 customers.

3 Q Let me turn to a different issue here. You are in charge
4 of the specific division at ePlus that sells software for
5 procurement; is that right?

6 A Yes.

7 Q And that division is less than two percent of the overall
8 revenues of the company; correct?

9 A Absolutely correct.

10 Q And you've been in charge of that division ever since the
11 acquisition of the patents?

12 A That, amongst others, sure.

13 Q And it's true that your division has never been
14 profitable; is that right?

15 A Well, it depends it how you look at it and how things are
16 journaled.

17 Q Isn't it true -- do you have your deposition --

18 THE COURT: How things are what?

19 THE WITNESS: Journaled.

20 THE COURT: Accounting-wise.

21 THE WITNESS: Accounting-wise, yes.

22 Q The way ePlus has decided to take account for the profits
23 and losses of your division, isn't it true your division has
24 never been profitable?

25 A Excluding licensing fees, we have not had a profit on the

1 individual products.

2 Q In fact, you are losing money; is that right?

3 A As a company, no. As a division, we have a slight loss
4 annually, yes.

5 Q In fact, just a few weeks before ePlus sued Lawson, your
6 division had a \$4 million write-down in its valuation because
7 of its declining sales; right?

8 A No. I think Elaine Marion tried to describe this as
9 goodwill, and it was an allocation that was put in and I don't
10 know the calculations of how goodwill gets calculated.

11 Q You do know that the goodwill valuation was reduced from
12 over \$4 million to zero for your company in early 2009; right?

13 A I don't. She would have been the best to testify.

14 Q So we can rely on what she said about that issue?

15 A If that's what she said, that's her testimony.

16 Q Is it true that all the licenses you've talked about in
17 this case were in situations where ePlus had sued someone and
18 the litigation was ongoing?

19 MR. STRAPP: Objection, Your Honor. Could we
20 approach for a moment?

21 THE COURT: I thought we did.

22 MR. STRAPP: I thought during the sidebar Mr.
23 McDonald said he wasn't going to get into this.

24 MR. McDONALD: All I said --

25 THE COURT: No, he said he was going to get into it,

1 and this was the way he was going to get into it, I understood.

2 THE WITNESS: Okay. Repeat the question, I'm sorry.

3 Q Mr. Farber, isn't it true that all the licenses you've
4 talked about were involving companies ePlus had sued; is that
5 right?

6 A Yes, that's correct.

7 Q And all of those agreements were settlements of those
8 lawsuits; correct?

9 A Correct.

10 Q So the parties hadn't finalized -- there was no final
11 decisions in those cases; correct?

12 A I don't understand what you mean.

13 MR. McDONALD: I'll withdraw the question.

14 THE COURT: Let's don't get into that. I'm going to
15 tell the jury about -- I think that's getting further than you
16 need to get.

17 Q EPlus has dozens and dozens of competitors in the software
18 procurement area; right?

19 A We have competitors, sure.

20 THE COURT: The question he's getting at is how many.
21 Why don't you try again, and you ask him if he knows how many
22 competitors he has in that area.

23 Q Isn't it true that you have dozens and dozens of
24 competitors, Mr. Farber, in the software procurement area?

25 A I don't know if it's dozens and dozens, but I think it's

1 fair to say there's a large number of them. Probably more than
2 ten.

3 MR. McDONALD: I have no further questions.

4 THE COURT: All right, ladies and gentlemen, you've
5 heard some evidence about the licenses that were done --
6 achieved after litigation began about patent infringement
7 between the companies and ePlus.

8 That was admitted solely for the purpose of allowing
9 you to understand the context of where the licenses came from,
10 and they'll argue about that later, but the fact that those
11 companies settled their litigation is not something that you
12 can consider in deciding whether there's infringement or
13 invalidity here at all. That's just -- it can be considered
14 for the limited purpose of assessing this concept of commercial
15 success. All right?

16
17 REDIRECT EXAMINATION

18 BY MR. STRAPP:

19 Q Mr. Farber, you were testifying about the valuation of the
20 patents; do you recall that?

21 A Yes.

22 Q And you mentioned there was a \$12,000 valuation of the
23 patents. Was that back at the time that ePlus acquired
24 ProcureNet assets and the patents in ProcureNet?

25 A Yeah, that's correct.

1 Q And did that \$12,000 valuation turn out to be accurate?

2 A No.

3 Q How so?

4 A Well, there were a number of things -- let me try to
5 explain it this way: Well, first of all, if it was valued at
6 \$12,000, we obviously were able to license almost \$60 million
7 worth of the patents. So somebody, you know, really estimated
8 incorrectly. So I think ePlus made a very good assessment of
9 its own value in the acquisition, but --

10 Q Let me ask you this: Do you have any knowledge about how
11 that valuation was actually done?

12 A I do.

13 Q How do you know how this valuation was done?

14 A When I spoke to the principals that were involved in the
15 valuation on both sides --

16 MR. McDONALD: Your Honor, this is outside the scope.
17 He didn't get into these things.

18 THE COURT: In fact, he was kept from going into it
19 because he said he wasn't involved in it, and in addition to
20 that, his answer is hearsay.

21 MR. STRAPP: Your Honor, he was asked about whether
22 or not --

23 THE COURT: Hearsay. Who was asked what. Doesn't
24 count in dealing with hearsay.

25 MR. STRAPP: We're not offering it for the truth of

1 the matter of whether or not it was a \$12,000 valuation was
2 accurate.

3 THE COURT: What's the non-hearsay purpose?

4 MR. STRAPP: The process involved in coming up with
5 the valuation.

6 MR. McDONALD: He knows the process because somebody
7 told him, so it's still hearsay.

8 THE COURT: But if he's offering it for a non-hearsay
9 purpose, then the non-hearsay purpose has to be relevant and
10 has to be judged by Rule 403 as well. Why is it relevant?

11 MR. STRAPP: It's relevant because it shows why the
12 number \$12,000 was come up with.

13 THE COURT: That's for the truth of the matter.
14 Thank you. That's what I thought it was relevant for. All
15 right. Let's move right on. Objection sustained.

16 Q Mr. Farber, you mentioned that the valuation turned out to
17 be inaccurate in the sense that you received almost \$60 million
18 in license revenue. Was it inaccurate in any other way besides
19 that?

20 A I'm not sure I understand.

21 Q Has the patents brought any other value beyond the
22 \$60 million to ePlus?

23 MR. McDONALD: Objection, beyond the scope, Your
24 Honor.

25 THE COURT: Overruled.

1 A Yeah. It has brought other value. We've been able to
2 market it. A number of clients have licensed our products, you
3 know, that revolve around -- you know, the patents,
4 specifically Procure+ and Content+, so, you know, we have
5 customers worldwide utilizing this solution, and we have other
6 divisions of the company such as our bar group, which is our
7 valuated reseller that incorporates the methodologies of the
8 patents into the solution, and they utilize Procure+ to
9 increase the growth of their business throughout the other
10 operating companies as well.

11 MR. STRAPP: Thank you. I have no further questions.

12 THE COURT: All right. You may step down. Next
13 witness.

14 MS. ALBERT: Your Honor, ePlus calls Mr. Brooks
15 Hilliard.

16 THE COURT: Brooks Hilliard.

17
18 **BROOKS L. HILLIARD,**
19 a witness, called by the plaintiff, having been first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. ALBERT:

23 Q Good afternoon, Mr. Hilliard.

24 A Good afternoon.

25 Q Could you please state your full name for the record.

Hilliard - Direct

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1 A Yes. Brooks Louis, L-o-u-i-s, Hilliard.

2 Q And what is your current business address?

3 A 1811 North Tatum Boulevard, Suite 3031, Phoenix, Arizona.

4 Q By whom are you presently employed?

5 A I have my own company, Business Automation Associates.

6 Q What is the nature of the business of Business Automation
7 Associates?

8 A I do two things primarily. I consult to businesses and
9 help them in the selection of computer systems for business
10 applications, and I do expert witness work in computer-related
11 litigation.

12 Q How much of your time is spent serving as an expert versus
13 your other activities?

14 A Over the course of the 30 years since I founded my firm,
15 it's been about half and half, about half of the consulting to
16 businesses on the selection of computer systems and about half
17 on the expert witness services, and some professional speaking
18 as well. Over the past few years, there's been a good demand
19 for the expert witness services, so it's tended to be mostly
20 that.

21 Q Can you briefly describe your educational background
22 starting with college.

23 A Yes. I have a bachelor's degree in engineering from MIT
24 which I received in 1968, and I have a master's in business
25 administration, MBA degree from the Harvard Business School

1 which I received in 1973.

2 Q Can you briefly describe any professional certifications
3 that you've received.

4 A I have two. I'm a certified management consultant. The
5 CMC certification is offered by the Institute of Management
6 Consultants which is the only worldwide professional
7 association for those in the management consulting profession.
8 It has chapters in countries all over the world, including the
9 United States, and I'm a past board member, national board
10 member for the United States chapter, and I currently serve as
11 the ethics committee chairman for the USA chapter of the
12 Institute of Management Consultants.

13 I also have a CCP certification, certified computer
14 professional. That's granted by the Institute for the
15 Certification of Computing Professionals, the ICCP, which is
16 also a worldwide organization. It was made up and sponsored by
17 over 20 different professional societies for the computer
18 professionals.

19 They didn't each want to have their own certification, so
20 they banded together to form the ICCP organization to grant the
21 certification worldwide. I'm one of only 15, or I believe
22 fewer than 15 people in the world that has both of those
23 certifications.

24 Q How long have you worked in the computer field?

25 A I started actually in college working summers and part

1 time as a software developer, and that was in the mid '60s.
2 I've worked more or less continuously aside from the time I
3 spent in the military service in the computer field, from then
4 until now. So I have over 40 years of computer industry
5 experience.

6 Q Now, you mentioned that you had some experience with
7 developing computer software. What types computer software
8 have you developed?

9 A I started out with highly technical software, what's
10 called assembly language software which is the most -- at the
11 most technical level, and I worked on two projects for NASA,
12 the Mariner Mars project and the Surveyor project which went to
13 the moon, and I developed telemetry collection software for
14 those projects.

15 I also did an Air Force project, and I did a project for
16 Honeywell. I was actually employed during that period of time
17 by a company called Infomatics which was at the time one of the
18 three largest computer consulting firms in the world, and all
19 of the projects I mentioned to you were done while employed
20 with Infomatics, contracted to NASA, to the U.S. Air Force, and
21 to Honeywell.

22 With Honeywell, I developed some what's call system
23 software for doing sorts and collating of data on a new
24 computer that Honeywell was going to introduce at that time.

25 Q Can you describe some of the areas in which you've been

1 retained as a consultant?

2 A Certainly. Most of the work I've done as a consultant is
3 work where I've been retained by a business that is looking
4 either to upgrade from an existing computer system to a newer
5 computer system to handle their business applications, or in
6 some cases where they were acquiring a system for the first
7 time, and I'm not talking necessarily about a PC and some
8 shrinkwrapped software, but these are the multi user systems
9 running from tens of thousands up to millions of dollars for
10 the hardware, the software, and the implementation services.

11 I've also been retained on projects where there were
12 information technology issues or questions that the company
13 needed to have answered or resolved, sometimes with regard to
14 putting together requirements for IT personnel, sometimes
15 interviewing, helping them interview IT personnel, that sort of
16 thing. But mostly on systems, acquisitions either for upgrades
17 or for systems.

18 Q Have any of these consulting engagements involved systems
19 having procurement functionality?

20 A Almost all of them. Starting -- I actually started my
21 business, Business Automation, the consulting firm, in 1980
22 with the idea that the consulting services would be my primary
23 business.

24 I've done over 200 of the projects, and in the early 1980s
25 was before systems were called enterprise resource planning, or

1 NRP, but most of my clients were looking for systems that are
2 what today we would call these large ERP type systems where
3 they encompass the entire breadth of functionality that a
4 business would need. In almost every case, procurement, the
5 purchasing was a part of the application, and in many of the
6 cases the key part.

7 Q What are a few of the companies that you consulted for?

8 A I have consulted for companies all over the country,
9 Stewart Stamping in New York; Insilco Technologies in North
10 Carolina; Aircraft Gear Corporation, a supplier to Boeing in
11 the Phoenix area; Phoenix Transit, the bus company in the
12 Phoenix area; Schatz Industries in the Phoenix area; Atlas
13 Roofing in Alabama, manufactures roofing materials;
14 manufacturing companies in Idaho; Dowdy Aircraft in St. Louis;
15 a wide variety of companies, many of them in distribution and
16 manufacturing, although I've also worked for publishers such as
17 Taylor Publishing in Texas, New Times Publishing in Phoenix,
18 Arizona, worked for professional organizations, CPA firms,
19 medical practices, and so forth. So a wide variety of
20 industries.

21 Q Have you ever been qualified as an expert witness in the
22 field of computer systems and software in prior cases?

23 A Yes.

24 Q On how many occasions roughly?

25 A I've been engaged in over a hundred engagements of this

1 type, information technology related cases. Most of them
2 settle, of course, before they go to trial, and if they don't
3 go to trial, I don't get qualified, but I've been qualified in
4 both federal and state courts, and I believe four states around
5 the country and in five different federal courts from Arizona
6 and New Mexico to Virginia.

7 MR. McDONALD: Your Honor, I think he's answered the
8 question on this point, and maybe we can go on to the next
9 question.

10 Q Have you ever testified in a case involving a system
11 having procurement functionality?

12 A Several, including one in New Mexico, and, of course, I
13 was involved as an expert in the *ePlus v. SAP* case here in
14 Virginia back a few years ago.

15 Q Was that a patent case?

16 A Yes, it was.

17 Q Did that involve the same patents as the patents-in-suit
18 here?

19 A Yes, it does.

20 Q Have you written any books or had any articles published?

21 A Both. I wrote a book called *Buying a Computer For Your*
22 *Growing Business, an Insider's Guide*, which was published by
23 Dow Jones Irwin in 1984, and I've had various articles
24 published over the years on IT-related topics.

25 The most recent one was on computer forensics in a legal

1 magazine called *For the Defense*.

2 Q Have you been retained for professional speaking
3 engagements?

4 A Yes, I have. I've been retained by a number of trade
5 associations and professional associations in the United
6 States, and recently I was retained to go to France to speak to
7 a group of IT-related expert witnesses in Paris.

8 Q Based on your education and your 40 years of experience in
9 the area of computer technology, what do you consider to be
10 your fields of expertise?

11 A My fields of expertise are the acquisition,
12 implementation, function, and issues related to usage of
13 business computer systems or computer systems used for business
14 applications including applications such as purchasing,
15 inventory management, sales, accounting, and so forth.

16 MS. ALBERT: Your Honor, at this time I would offer
17 Mr. Hilliard as an expert in the area of the use of computer
18 systems for business functions including procurement and
19 related activities.

20 THE COURT: Any objection?

21 MR. McDONALD: No objection.

22 THE COURT: He is so qualified as an expert in those
23 areas.

24 Q Mr. Hilliard, were you retained by counsel for ePlus to
25 provide expert opinions concerning the issues of validity of

1 the ePlus patents?

2 A Yes.

3 Q In the course of your engagement, have you reviewed and
4 responded to opinions that were rendered by Lawson's expert,
5 Dr. Shamos?

6 A Yes.

7 Q In general, what did you do to prepare your response to
8 Dr. Shamos's opinions?

9 A Well, of course I read his opinions, and I reviewed all
10 the documents that he had referenced in his opinions. I
11 also -- there are a large volume of documents that have been
12 produced in this case, and I've read through, I think, all of
13 those that relate to the validity of the patents.

14 I've also reviewed the testimony, the deposition testimony
15 of the inventors and those with knowledge of some of the
16 alleged prior art systems. I've also reviewed testimony from
17 the SAP trial of those same individuals.

18 Q Did you review the patents that are at issue here in the
19 file histories relating to their prosecution before the Patent
20 Office?

21 A I did. Both the patents at issue, and there are some
22 patents referenced that I reviewed in some detail.

23 Q Did you review Dr. Shamos's expert report?

24 A Yes, I did.

25 Q Were you provided with an understanding of the applicable

1 legal principles that govern your analyses?

2 A Yes, I was.

3 Q Did you have an opportunity to personally review and use
4 any of the alleged prior art systems?

5 A Well, I have had that experience with the PO Writer system
6 during the SAP trial. SAP was able to produce a copy of that
7 software, and I was able to experiment with it, exercise it,
8 and determine how it functioned. I did so prior to that trial,
9 and I also did so in court during that trial.

10 Q Did you review file listings relating to the computer code
11 for that system?

12 A I did.

13 Q And do you recall any relevant information about the dates
14 that were included in those file listings?

15 A Yes. The dates included both dates preceding and dates
16 following August of 1994.

17 MR. McDONALD: I'll object, Your Honor, as irrelevant
18 and confusing. We haven't proffered any, and he's talking
19 about dates of things that weren't in evidence in this case.

20 MS. ALBERT: I'll move on.

21 THE COURT: I think he's just relating what he did
22 and his familiarity with the systems at issue.

23 Q Did you have the opportunity to review the validity report
24 submitted by ePlus's other technical expert, Dr. Alfred Weaver?

25 A Yes, I did.

1 Q Did you also have an opportunity to review the Court's
2 order concerning the construction of the key terms used in the
3 patent claims?

4 A Yes.

5 Q Did you take the Court's claim constructions into account
6 in rendering your opinions?

7 A Yes. They were a foundation.

8 Q Now, turning to some of Lawson's contentions that are at
9 issue here, are you aware that Lawson has alleged that several
10 systems were in public use prior to the relevant August 1994
11 filing date of the ePlus patents?

12 A I'm aware of that, yes.

13 Q And what types of evidence do you consider to be relevant
14 to your analysis of this issue of public use?

15 A My -- when I look at this, I have to look at what evidence
16 is there in documentary form primarily to determine whether the
17 dates of the document can corroborate that the allegedly in-use
18 system was in use and performing the functions that it's
19 claimed to perform, i.e., the functions in the claims before
20 August of 1994.

21 So I look for hard written documentation that has a dating
22 on it that shows that it existed prior to 1994. I also
23 consider other evidence, but other evidence needs to be
24 corroborated, in my view, with documentary evidence.

25 MR. McDONALD: Object, Your Honor, to the witness's

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1 explanation of corroborating. His own personal standard isn't
2 appropriate or relevant here.

3 THE COURT: What do you say?

4 MS. ALBERT: It's relevant to his analysis of what he
5 considered for purposes of trying to determine and render
6 opinions on whether systems were allegedly in public use.

7 THE COURT: I'll tell you about corroboration in
8 connection with the public use, and so I'll give you the
9 instruction, ladies and gentlemen. He was just explaining why
10 it is that he confined his -- that he focused principally on
11 documentary evidence.

12 Q Now, Mr. Hilliard, are you -- in rendering your opinions
13 concerning the validity of ePlus's patents, are you aware that
14 Lawson has alleged that each of the asserted claims at issue
15 here are invalid as being anticipated by the RIMS system as
16 described in the '989 patent?

17 A I'm aware that's their contention, yes.

18 Q Do you agree with those allegations?

19 A No, I don't.

20 Q Why do you disagree with that?

21 MR. McDONALD: Your Honor, I don't think we went into
22 the anticipation of RIMS in terms of Dr. Shamos's opinion. I
23 thought we already went into it --

24 THE COURT: I lost what you were saying.

25 MR. McDONALD: Dr. Shamos's testimony was focused on

1 the combination of the RIMS and TV/2 systems, I believe, and
2 moreover, I think we've already established that we're not
3 responding to other experts' testimony on the witness stand.
4 We're just giving this expert's opinions.

5 MS. ALBERT: I didn't ask if he was responding to Dr.
6 Shamos's opinions. I asked if he was responding to Lawson's
7 contentions.

8 THE COURT: I hope that you were asking was he aware
9 that there was a contention -- that their anticipation argument
10 involved the RIMS '989 patent.

11 MR. McDONALD: That's correct. That's what I asked.

12 THE COURT: Then objection overruled.

13 Q Why do you disagree with Lawson's contentions?

14 A I disagree with it because I've looked at the function of
15 the RIMS system as described in the '989 RIMS patent, and it
16 does not perform all of the elements of any of the claims of
17 the 12 claims at issue. I've looked at the function and
18 compared it on a claim-by-claim, element-by-element basis, and
19 it doesn't perform.

20 Q Do you understand that Lawson also contends that all 12 of
21 the asserted patent claims are obvious based on the combination
22 of the RIMS system as disclosed in the '989 patent and the TV/2
23 search program as it existed prior to the inventors' invention
24 of the electronic sourcing system?

25 A I understand that that's their contention, yes.

1 Q Do you agree or disagree with that contention?

2 A I disagree.

3 Q Why do you disagree?

4 A Once again, I have looked in the same way that I did with
5 the RIMS alone at the combination of the two and all the
6 implications of the combination of the two, the RIMS system as
7 described in the '989 patent and the TV/2 system based on the
8 sketchy description that's available of it, and even when you
9 combine them and try and take the implications of that
10 combination, it still does not satisfy all of the elements of
11 any of the 12 claims.

12 Q Now, Mr. Hilliard, there's been a stipulation here that
13 the person of ordinary skill in the art, for purposes of the
14 analyses for validity, is a person with a Bachelor of Science
15 degree in computer science or equivalent and a year or two of
16 practical programming experience having an understanding of the
17 basic principles of supply chain management and procurement in
18 the mid 1993 to 1994 time frame. Did you utilize this
19 definition of the person of ordinary skill for your analyses?

20 A Yes. That's the same understanding that I used.

21 Q Now, these alleged prior art systems that we're talking
22 about, do you have an understanding, from your perspective as
23 one who is an expert in computer systems for use in business
24 applications such as procurement, whether or not these systems
25 evolved over time?

1 A Yes, they did evolve over time.

2 Q So are features present in 2011 necessarily present in
3 2008 or 2007?

4 A No, and that generalization would apply probably for any
5 similar time period in the past. In my experience, all
6 application --

7 MR. McDONALD: Objection, Your Honor. He's passed
8 the question, and it was a very general question.

9 MS. ALBERT: We can move on.

10 Q Are you aware, from your review of deposition testimony
11 and documents produced in discovery, as to whether or not any
12 of the alleged prior art systems here evolved over time?

13 A Yes.

14 Q What is your understanding with respect to the RIMS
15 system, for example?

16 A The evidence is that it did evolve over time.

17 Q So for purposes of the jury's determination of these
18 validity issues, is it important or not important for them to
19 understand what particular features and functionality a system
20 had at a critical point in time?

21 A I believe it's important to understand what features and
22 functions the system had and was able to perform at -- in
23 August of 1994, and that features and functions need to be
24 dated or corroborated to be functioning at that point in time.

25 Q Suppose a prior art system was modular in nature -- well,

1 perhaps I should ask you, what is your understanding of a
2 computer software system that is modular?

3 A Having worked in the computer industry for computer
4 vendors before going out on my own as a consultant, companies I
5 worked for produced modular systems, and by that we meant they
6 were systems that were sold in pieces. Customers didn't have
7 to buy every single module. There typically might be a
8 required module and optional modules.

9 Q So suppose a prior art system was modular. Is that
10 relevant to the issues that the jury needs to consider?

11 A I believe.

12 MR. McDONALD: Objection, Your Honor. I don't think
13 he's in a position to tell the jury what's relevant here. Plus
14 modular is not even part of the claims. I think it's
15 irrelevant.

16 THE COURT: I think the focus here is what's the
17 reason for his -- what is his opinion and what is the reason
18 for it, not what's relevant for the jury. I'm not going to let
19 in irrelevant evidence, but he shouldn't be commenting upon it.
20 Let's frame the question another way, please.

21 MS. ALBERT: Thank you, Your Honor.

22 THE COURT: Sustained.

23 MS. ALBERT: I will move on.

24 Q With respect to the PO Writer system, did you seek
25 contemporaneous documents that supported each of the assertions

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1 that Lawson has made with respect to the features and
2 functionalities that that system allegedly had?

3 A No, I did not. No such documents were produced by the
4 inventor or the developer of the system, and no such documents
5 were produced by Lawson.

6 THE COURT: Are you talking about in August of 1984?
7 1994?

8 THE WITNESS: I'm sorry, Your Honor. What was it?

9 THE COURT: Are you talking about the functionality
10 and features as they existed in August of 1994?

11 THE WITNESS: Yes. Yes, Your Honor, that's what -- I
12 saw no evidence of what the functions and features were at that
13 time, or for that matter, any time.

14 THE COURT: You didn't see any contemporary
15 documentation that supported what the features or functionality
16 were of the PO Writer in August of 1984 -- '94?

17 THE WITNESS: I saw some contemporaneous
18 documentation of some features and functions, but I did not see
19 complete contemporaneous documentation of all of the features
20 and functions that it's my understanding are part of the
21 contention that that system anticipates the patents-in-suit.

22 Q Did you review the PO Writer guided tour manual?

23 A I did.

24 Q Now, were these PO Writer documents that you referenced
25 publicly available?

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1 A No, they were not.

2 Q Did you see any pre-1994 documentation relating to a
3 license by any company to a PO Writer system having all of the
4 alleged features and modules that Lawson relies upon for its
5 contentions?

6 A I didn't see any of that, no, and it's my understanding
7 that Mrs. McEneny was asked if she had that, and she said she
8 didn't in her deposition.

9 Q Did you see any pre-1994 documentation relating to a
10 license by any company to a RIMS system having all of the
11 alleged features that Lawson contends existed at that time?

12 A No.

13 Q Did Lawson produce any documentation to corroborate that
14 the TV/2 search program, having all of the alleged features
15 that it relies upon, was ever licensed to anyone prior to IBM's
16 contract with Fisher Scientific relating to the patented
17 electronic sourcing system?

18 A I saw no such document, no such corroboration.

19 Q Now, turning to the patents-in-suit, Mr. Hilliard, do you
20 have an opinion as to what the problem was that the inventors
21 were trying to solve in those patents based upon your review of
22 the patent specification and the patent claims?

23 A Yes, I do.

24 Q Can you describe your understanding.

25 A Yes. The patents-in-suit solve a problem that's been, to

1 my knowledge, a problem for a good period of time.

2 MR. McDONALD: Objection, Your Honor, beyond the
3 scope of the question.

4 MS. ALBERT: I asked what his understanding was -- I
5 can reframe my question.

6 Q What is your understanding of the nature of the problem
7 that the inventors were trying to solve in the ePlus patents
8 based upon your review of the patent specification and the
9 patent claims?

10 A They were -- it's my understanding that they were trying
11 to design a system, create an invention that would become a
12 system that would empower purchasers to review catalogs and
13 select items and select vendors to acquire or purchase those
14 items from a variety of vendors.

15 Q Now, with respect to any of these prior art systems that
16 you've reviewed, do you have an opinion as to whether or not
17 they satisfied all of these needs?

18 MR. McDONALD: Objection, Your Honor. We're not
19 talking about invalidity. This is not connected to the claims,
20 and I think it's confusing.

21 MS. ALBERT: Well, it is connected to his analysis of
22 the scope and content of the prior art and secondary
23 considerations of nonobviousness, and it was covered in his
24 expert report.

25 THE COURT: It is generally, but it's fairly -- it is

1 so general, maybe, I don't know that it's helpful. Why don't
2 you try to get more specific.

3 Q In your opinion, did the PO Writer system satisfy the
4 needs that were recognized by the inventors in their patents?

5 MR. McDONALD: Same objection, Your Honor. I think
6 we need to tie it to the claims.

7 MS. ALBERT: I'll rephrase.

8 Q Mr. Hilliard, do you have an opinion as to whether or not
9 the PO Writer system satisfied the needs or the requirements of
10 the ePlus patent claims?

11 A Yes, I do have an opinion of that.

12 Q What is your opinion?

13 A Even if it did operate as described in the documents, even
14 under those circumstances, and there's no corroboration that it
15 did, but even if that were the case, it wouldn't satisfy the
16 claims.

17 Q What were some of your reasons why it doesn't satisfy the
18 claims?

19 A Primarily the PO Writer is a system that allows users to
20 review catalogs, but the items in the catalogs are not
21 associated with vendors, and that's one of the key elements of
22 almost every single claim in that the patents-in-suit, the
23 claims of the patents-in-suit all call for the buyer to be able
24 to look for items and to select items to create requisitions
25 where the items in the requisitions are associated with the

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1 vendors from whom that buyer wants to purchase, and then to
2 turn those requisitions into one or more purchase orders where
3 the items on the purchase order -- and you only send one
4 purchase order to each vendor. You wouldn't send a purchase
5 order to a vendor that doesn't sell the item or from whom you
6 don't want to buy the items. So where the purchase orders pick
7 up the association of vendors from the requisition and
8 translate that into the purchase order.

9 The PO Writer system is simply a form-filling system.
10 It's designed for the purchasing agent, someone in the
11 purchasing department of the company to make the determination
12 of who the vendor or supplier will be, not the buyer, not the
13 one who specifies. So at every step along the way in that
14 system, even if the buyer indicates a preferred vendor, or even
15 if the item comes out of a catalog selected by the buyer and
16 that catalog is associated with a vendor, by the time that item
17 gets into the requisition, the vendor association is lost.

18 The purchasing agent has to reenter the vendor, and then
19 once again, once the requisition is completed, it's the
20 purchasing agent, not the requisition, that determines what
21 supplier the purchase order goes to. So it doesn't satisfy
22 almost all of the claims because it loses that connection
23 between the selection of the buyer who wanted to pick out
24 vendors that he knows and is comfortable with and the ultimate
25 purchase.

1 Q Now, I want to turn to the RIMS system, if you could. Did
2 you review the Johnson '989 patent relating to the RIMS system
3 that's relied upon by Lawson for its invalidity positions?

4 A Yes, I did.

5 Q And you indicated that you had reviewed the testimony of
6 the Fisher Scientific inventors relating to the RIMS system?

7 A I have.

8 Q Did you review Ms. Eng's trial testimony from the prior
9 trial between ePlus and SAP concerning the work that IBM did
10 for Fisher Scientific?

11 A Yes.

12 Q Did you review Ms. Eng's deposition testimony in this
13 case?

14 A Yes, I did -- deposition testimony, yes.

15 Q Did you review Mr. Gounaris's 's trial testimony from the
16 prior trial between ePlus and SAP concerning IBM's work for
17 Fisher Scientific?

18 A I was actually in attendance for both Ms. Eng's and Mr.
19 Gounaris's testimony, so I was there, and I've also reviewed
20 their testimony since.

21 Q Now, does the description of the system in the '989 patent
22 serve to substantiate the details of any particular commercial
23 version of the Fisher RIMS system that was allegedly publicly
24 used prior to August of 1994?

25 A According to the testimony of the inventors in their

1 depositions and in the prior trial, no, it does not. There are
2 features and functions that are described in the '989 patent
3 that were never implemented into the RIMS system, and there are
4 RIMS system features and functions that were added that were
5 not described in the '989 patent, and that this evolved over
6 time. There were several versions of RIMS that evolved over a
7 period of time starting prior to 1994 and continuing beyond
8 1994.

9 Q Did Lawson provide any evidence of any Fisher Scientific
10 customer who had a RIMS system installed having all the
11 features described in the '989 patent?

12 A No.

13 Q Let's turn now to the functionality of the RIMS system as
14 described in that '989 patent, and can you just describe at a
15 high level the functionality of that system?

16 A Yes. The RIMS system, as described in the '989 patent, is
17 a seller's system. It's not a buyer's system like the
18 patents-in-suit, so it's operated by a customer service
19 representative who is an employee of Fisher.

20 When it's installed at a Fisher customer, according to the
21 inventors, a Fisher customer service representative operates
22 the Fisher RIMS system and takes requests from buyers who work
23 for the customer and enter it into the system, but -- and then
24 the system determines where the items that that customer wants
25 are. They could be in a local, what's called just-in-time

1 inventory, they could be at a distributor, the Fisher
2 distributor's inventory, the corporate inventory. They could
3 be something that Fisher is going to purchase from an outside
4 vendor and then deliver and resell to the buyer.

5 So it creates a requisition, and it completes that
6 transaction, all done by the Fisher CSR, and it delivers the
7 item and manages the inventory. RIMS stand for requisition and
8 inventory management system, and that's what it is. It's a
9 requisition and inventory management system that works from the
10 seller's standpoint. It's a seller's system.

11 Q Now, so you indicated that the distributor's customer
12 service representative was the user of the RIMS system. How is
13 that relevant to your analysis as to whether the RIMS system is
14 an electronic sourcing system as required by the system claims
15 at issue here?

16 A Well, we have a construction that I have referred to and
17 understood as to what an electronic sourcing system is, and
18 it's a buyer's system.

19 MS. ALBERT: Can we put the juror's glossary of claim
20 terms up on the screen.

21 Q And if you look about the middle of the page, has the
22 Court construed the term electronic sourcing system?

23 A Yes, it has.

24 Q What is the Court's construction of that claim term?

25 A It's an electronic system for use by a prospective buyer

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1 to locate and find items to purchase, to purchase from sources,
2 suppliers, or vendors, and in this case, I believe sources,
3 suppliers, and vendors are synonymous.

4 Q And how is it relevant to the issue of whether the RIMS
5 system satisfies the claim requirement of an electronic
6 sourcing system, of whether or not the user of the system is
7 the distributor's customer service representative?

8 A The RIMS system is a seller's system. It's not for use by
9 the prospective buyer. It's for use by the Fisher customer
10 service representative or CSR.

11 Q Could the RIMS system be used to purchase goods from
12 multiple different sources, suppliers, or distributors?

13 A No. Only from Fisher.

14 Q Now, did the RIMS system have a database?

15 A Yes.

16 Q Did it have a database with records of items?

17 A Yes.

18 Q Do you have an opinion as to whether or not that database
19 constitutes a database with multiple vendor catalogs?

20 A I do have an opinion, yes.

21 Q What is your opinion?

22 A It does not.

23 Q Why not?

24 A It is not -- the items have no vendor or source
25 association with them as a catalog item would, because all of

1 the items in it are Fisher items that are going to be sold.
2 There's no need for association of a vendor or a source because
3 all items requisitioned through the RIMS system are sold to the
4 customer from Fisher.

5 Q Can we verify that there is no source related information
6 in the item database by reference to the '989 patent?

7 A Yes.

8 Q Could we see DX-7 at table Roman numeral vi, and that's at
9 column 39. Could you blow up there on the left-hand corner
10 table vi. What is illustrated in this table vi?

11 A This illustrates what's called the part master which is
12 the listing of all of the items in the Fisher RIMS database,
13 and the vendor or supplier is nowhere listed there. If you
14 look at -- I've looked at every single item in the part master,
15 and the vendor supplier isn't there. It's irrelevant because
16 the vendor is always Fisher.

17 Q Now, do you see about in the middle of the table there's a
18 reference to an MFG part NBR which I interpret to mean
19 manufacturer part number? Do you see that?

20 A Yes, I do.

21 Q Would that constitute vendor or source-related data?

22 A No. That's reference information. With the Fisher RIMS
23 system, the customer never buys from the manufacturer. The
24 customer always buys from Fisher. This is an indication for
25 Fisher, perhaps, where they source the item that they will

1 ultimately sell to the buyer, but it is not where the customer
2 buys the item.

3 Q Was there any way to select product catalogs to search
4 within the RIMS system?

5 A Well, the RIMS system doesn't have catalogs, but even if
6 you were to construe its parts master to be a catalog, and I
7 wouldn't construe it that way because it doesn't have -- the
8 items aren't related to vendors, but even if you were to
9 construe it that way, it would only have one, so you can't
10 select which one you want from multiple, because it would only
11 have one.

12 Q Did the RIMS system include a search program?

13 A No.

14 Q Is the presence or absence of a search program relevant to
15 any claims at issue here?

16 A Several of the claims.

17 MS. ALBERT: Mike, could we see the jurors' claim
18 term glossary at page four.

19 Q In the middle of that glossary, there's a claim element,
20 means for searching for matching items among the selected
21 product catalogs; do you see that?

22 A I do.

23 Q And what structures has the Court defined would satisfy
24 that claim limitation?

25 A Well, it says the materials X of this element are

1 disclosed as search programs and modules operating on a
2 computer system with access to the given database and their
3 equivalents, and then it cites the columns and rows within the
4 patent where those corresponding structures, materials, or acts
5 are referenced.

6 Q So if the RIMS system as described in the '989 patent does
7 not have a search program, would that system satisfy this claim
8 requirement?

9 A It would -- for that reason alone, it wouldn't satisfy the
10 claim element. It also wouldn't because it can't search among
11 selected catalogs because you can't select a catalog.

12 Q And this particular claim element, what claim is it
13 relevant to?

14 A '683, claim three.

15 MS. ALBERT: And, Mike, if we can continue to look
16 down further on the claim glossary, down below that, there's
17 another element, means for searching for matching items that
18 match the entered product information in the selected portions
19 of the database, and that element comes from the '172 patent,
20 claim one.

21 Q Do you see that, Mr. Hilliard?

22 A I do.

23 Q What structures has the Court defined as being required in
24 order to satisfy this claim requirement?

25 A Once again, there's reference to the columns and rows

1 within the '172 patent that identify the specific corresponding
2 structures, materials, or acts.

3 Q And what is the text of the Court's definition there?

4 A The corresponding structures, materials, or acts of this
5 element is disclosed as search programs and modules operating
6 on a computer system with access to data in a database or other
7 file system and their equivalents. And as I say, it refers to
8 the specific places within the '172.

9 Q So if the RIMS patent as described in the '989 patent does
10 not have any description of a search program, would that system
11 in the '989 patent satisfy this claim requirement?

12 A No.

13 Q Could the RIMS system at the customer's facility build a
14 requisition from data relating to selected matching items found
15 in conducting searches of vendor catalogs and their associated
16 sources?

17 A No, it can't do that for a number of reasons. There are
18 no catalogs, you can't select a catalog, you can't search --
19 without a search, there are no matching items and so forth.

20 THE COURT: Ms. Albert, how much longer do you have
21 with this witness?

22 MS. ALBERT: I probably have another area.

23 THE COURT: Well, I think probably we ought to take
24 lunch. Their lunches are here, so take your notebooks with
25 you, please.

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(Jury out.)

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THE COURT: How many witnesses do you have after this witness, Mr. Robertson?

6

MR. ROBERTSON: This is our last witness, Your Honor.

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THE COURT: Thank you. We'll have the lunch recess for an hour.

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(Luncheon recess.)

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